POLICY NOTE

THE DISABILITY ASSISTANCE (SCOTTISH ADULT DISABILITY LIVING ALLOWANCE) REGULATIONS 2025

SSI 2025/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 31(2), 36(2), 41(4)(a), 43(5), 51(1), 52 and 95 of the Social Security (Scotland) Act 2018 (the 2018 Act). Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes the instrument subject to the affirmative procedure.

This instrument sets out the rules and eligibility criteria for Scottish Adult Disability Living Allowance, a form of assistance to provide financial support to disabled individuals to mitigate the additional costs of living with a disability or health condition. This new form of social security assistance made under section 31 of the 2018 Act will replace Disability Living Allowance for those remaining adults in Scotland on that benefit. It will not be open to new applications.

The instrument includes provisions to include the Scottish definition of terminal illness as part of Scottish Adult Disability Living Allowance, and provisions in relation to individuals who move from Scotland to reside in another part of the United Kingdom, or who move to Scotland. It further includes provisions for when short-term assistance is to be given to those who have been in receipt of Scottish Adult Disability Living Allowance.

This instrument also includes provision to transfer the awards of the remaining adults in Scotland in receipt of Disability Living Allowance (which is being administered by Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to Scottish Adult Disability Living Allowance, which will be administered by Social Security Scotland.

Policy Objectives

Scottish Adult Disability Living Allowance is intended to improve outcomes for disabled people, by providing financial assistance to help meet the additional costs of living with a disability or health condition(s).

This form of assistance will replace Disability Living Allowance in Scotland for adults who are in receipt of Disability Living Allowance as administered by the Department for Work and Pensions on behalf of Scottish Ministers in Scotland. It will be a closed benefit, meaning it will not be open to new applications. It is intended only for those whose awards are transferred from Disability Living Allowance. This new benefit will be delivered by Social Security Scotland on behalf of the Scottish Ministers. The regulations include provisions detailing the eligibility criteria, the rates of assistance, the making of payments and case transfer.

The eligibility criteria for Scottish Adult Disability Living Allowance broadly aligns with the eligibility criteria for Disability Living Allowance currently administered by the Department for Work and Pensions on behalf of Scottish Ministers. Reflecting the Scottish Government's approach to social security, Scottish Adult Disability Living Allowance is intended to be person-centred, taking into account the specific needs of each individual.

In devolving disability benefits, the Scottish Government is making improvements to the collection of supporting information about an individual's disability, as well as other specific areas such as the age for appointees and the payment of Scottish Adult Disability Living Allowance whilst in legal detention, to better meet the needs of individuals entitled to Scottish Adult Disability Living Allowance.

Scottish Adult Disability Living Allowance will be delivered by Social Security Scotland from March 2025. There will be no new applications for Scottish Adult Disability Living Allowance; all awards will result from case transfer from Disability Living Allowance. We aim to complete case transfer by the end of 2025.

Care and Mobility components

Scottish Adult Disability Living Allowance consists of two components: the care component provides three rates of assistance for individuals who require assistance with personal care, or supervision as a result of a physical or mental disability; the mobility component provides two levels of assistance for individuals who have a disability that affects their ability to move around outdoors, or who require supervision to do so. There are some restrictions to the rates of assistance which people can receive once they have reached the State Pension Age, to account for natural aging and align with other Scottish benefits for older people.

Terminal Illness

Individuals who are terminally ill will be automatically entitled to the highest available rate of both the care and mobility components.

Short-term Assistance

The regulations make provision for the introduction of short-term assistance. Short-term assistance is given by the Scottish Ministers to an individual on a short-term basis under section 36 (short-term assistance) of the 2018 Act. An individual may be eligible for short-term assistance if they have been previously entitled to Scottish Adult Disability Living Allowance and, as a result of a subsequent determination, their Scottish Adult Disability Living Allowance entitlement has reduced or stopped. In the event of a re-determination or appeal, individuals can apply for short-term assistance in order to continue to receive their previous payment amount until the conclusion of their re-determination or appeal.

Suspension of Assistance

Provisions relating to the suspension of assistance are included in the draft regulations. Regulation 33 sets out the specific circumstances in which payment of assistance can be suspended. The regulations also set out the considerations that Scottish Ministers must make before suspending payment of assistance, the individual's right to request a review of the suspension, the information that should be provided to the individual when a suspension occurs and the circumstances in which a suspension should end.

Case Transfer

Responsibility for delivering disability benefits for individuals living in Scotland who receive Disability Living Allowance will transfer from the Department for Work and Pensions on behalf of Scottish Ministers to Social Security Scotland in 2025. The disability assistance these individuals are entitled to will also change from Disability Living Allowance to Scottish Adult Disability Living Allowance.

Scottish Minsters have developed a safe and secure process, which will require no action on behalf of the individual wherever possible and has been designed in line with the following case transfer principles:

• no person will be required to re-apply for their benefit
• people will continue to receive the right payment, at the right time
• no individuals will be subject to a DWP face-to-face assessment after the date of launch for Adult Disability Payment in 2022;
• we will complete the case transfer process as soon as possible while ensuring it is safe and secure; and
• we will clearly communicate with people throughout the transfer process.

When an individual's disability benefit has been selected for transfer, Scottish Ministers will receive from DWP data and information relevant to the individual's most recent Disability Living Allowance award. Once Scottish Ministers have received this information, they will issue the individual with a notice of intention to transfer, which will set out the process and timescales for that transfer. Scottish Ministers will use the information from DWP to make a determination without application of the individual's entitlement to Scottish Adult Disability Living Allowance on a like-for-like basis over a period prescribed in the notice.

This period can be extended if both Scottish Ministers and the Secretary of State for Work and Pensions agree there is good reason to do so. The determination of the individual's entitlement to Scottish Adult Disability Living Allowance will have the effect of ending the corresponding award of Disability Living Allowance. A determination of entitlement in respect of Scottish Adult Disability Living Allowance made as a result of the case transfer process comes with the same rights to re-determination and appeal as any other determination made under section 52 of the Social Security (Scotland) Act 2018.

In circumstances where an individual's entitlement to Scottish Adult Disability Living Allowance should be higher than their Disability Living Allowance award, and where Social Security Scotland have identified such a case, either from the information provided by DWP or additional information from the individual, provision has been made to pay Scottish Adult Disability Living Allowance at the relevant higher rate from the point of transfer.

Scottish Ministers will identify individuals whose awards will transfer from Disability Living Allowance to Scottish Adult Disability Living Allowance using the residential address held by DWP in the individual's Disability Living Allowance record. An individual will be assumed to meet the residence and presence conditions for Scottish Adult Disability Living Allowance at the point of transfer if they have a Scottish postcode. If Scottish Ministers determine after transfer that an individual should not have transferred because they fail to meet the residence and presence conditions, a further determination without application will be made that will end their Scottish Adult Disability Living Allowance entitlement. This will also reverse the effect of ending the individual's Disability Living Allowance award.

All individuals appointed by DWP in respect of a Disability Living Allowance award will be temporarily deemed to act as an appointee for the purposes of Scottish Adult Disability Living Allowance until it is reasonably practicable for Scottish Ministers to consider whether to make an appointment under the Social Security (Scotland) Act 2018.

Scottish Ministers will prioritise transferring the benefits of individuals who have been diagnosed with a terminal illness but who do not fit the current DWP definition, to ensure they can access the highest available rates of the mobility and care component under Scottish Adult Disability Living Allowance.

Miscellaneous Amendments

These Regulations also make miscellaneous amendments to the Disability Assistance for Working Age People (Scotland) Regulations 2022 and The Disability Assistance for Older People (Scotland) Regulations 2024.

EU Alignment Consideration

This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

Consultation

Between 5 March and 28 May 2019, the Scottish Government undertook a public consultation on its proposals for the delivery of disability assistance. The consultation received 263 responses from individuals and stakeholder organisations. A summary of these responses can be found in the analysis of consultation responses.[1] The views expressed within the consultation responses helped shape the proposals for Scottish Adult Disability Living Allowance. The Scottish Government published its response to the consultation findings in October 2019.[2]

Respondents were broadly supportive of the policy proposals, although several changes were made to our approach to disability assistance in response to the consultation. Such changes include setting the time limit for requesting a re-determination to 42 calendar days, an increase on the Department for Work and Pension's time limit of one month. If Social Security Scotland is unable to complete a re-determination within 56 calendar days, an individual has a right to appeal to the First-tier Tribunal for Scotland.

In November 2022, officials presented the Scottish Government's policy position on Scottish Adult Disability Living Allowance to the Disability and Carer Benefits Expert Advisory Group (DACBEAG). DACBEAG provided advice on Scottish Adult Disability Living Allowance in December 2022, with the Scottish Government responding in March 2023.[3]

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[1] Disability assistance in Scotland: analysis of consultation responses - gov.scot (www.gov.scot)
[2] Disability assistance in Scotland: response to consultation - gov.scot (www.gov.scot)
[3] Disability and Carers Benefits Expert Advisory Group - gov.scot (www.gov.scot)

Officials have also engaged with a variety of stakeholders on Scottish Adult Disability Living Allowance. In April 2023, a meeting of the Ill Health and Disability Benefits Stakeholder Reference Group was held, giving Group members an opportunity to consider the Scottish Government's policy position, while also allowing officials to assess the impact of the Scottish Government's policy position on third sector organisations. Stakeholders were supportive of the introduction of Scottish Adult Disability Living Allowance, and emphasised the need for clear and concise communications on this complex policy. Officials agreed to continue to work with stakeholders to ensure that this is achieved. Officials met with the group again in August 2024 to discuss their approach to communications in more detail, which the group supported.

Case Transfer Consultation

Two surveys regarding the case transfer process was sent out to Experience Panel members in January and February 2019. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019.

These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time. Additionally, the Scottish Government has been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of its ongoing wider case transfer engagement. This user research and engagement with stakeholders has been key to developing a set of case transfer principles to guide the development of the approach to case transfer.

A policy position paper on case transfer was published in February 2019.

Officials met with the Disability and Carers Benefits Expert Advisory Group (DACBEAG) to discuss case transfer more generally in June 2020. The Group provided their full advice in July 2020. Officials met with DACBEAG to discuss Disability Living Allowance to Scottish Adult Disability Living Allowance transfer on 3 November 2022. The Group provided their advice in December 2022 and the Scottish Government responded in March 2023.

Scottish Commission on Social Security – Scrutiny of the Draft Regulations

Under section 97 of the 2018 Act, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS). SCoSS published their scrutiny report on 14 June 2024. The Scottish Government's response was sent to SCoSS on 1 November 2024.

The case transfer provisions have been made under section 95 of the Social Security (Scotland) Act 2018, and therefore do not need to be referred to SCoSS for formal scrutiny. However, SCoSS were provided the draft regulations and invited to provide feedback in their scrutiny report.

Impact Assessments

An Equality Impact Assessment, Islands Community Impact Assessment, Children's Rights and Wellbeing Impact Assessment, and a Fairer Scotland Duty Assessment are to be published with the laid regulations. The impact assessments indicate that the commencement of Scottish Adult Disability Living Allowance will have a broadly positive impact on a range

of groups with protected characteristics, island communities and in relation to the reduction of the impact of inequalities of outcome and socio-economic disadvantage.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Disability Assistance (Scottish Adult Disability Living Allowance) (Scotland) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

Financial Effects

A Business and Regulatory Impact Assessment has been completed and is provided with this instrument. The Scottish Government does not believe that Scottish Adult Disability Living Allowance will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom or internationally including Europe and the rest of the world. The Scottish Government expects that there may be a limited impact on the operational business of local authorities or health boards, principally because Social Security Scotland may seek to obtain, with the individual's consent, information held by public sector bodies about the individual's disability to make a determination of entitlement.

The right to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland is provided for in the 2018 Act. Legal Assistance will continue to be available to individuals to appeal a determination of entitlement to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Scottish Adult Disability Living Allowance. Current recipients of Disability Living Allowance are already able to access legal aid to appeal entitlement decisions.

The Scottish Fiscal Commission (SFC) has a statutory duty to provide independent and official forecasts of Scottish GDP, devolved tax revenues and devolved social security expenditure. Under the Scottish Fiscal Commission Act 2016, the SFC may also produce forecasts on other "fiscal factors", defined as "anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000.

The SFC has produced a supplementary costing on Scottish Adult DLA to accompany the laying of the draft regulations, based on the confirmed policy details. This includes confirmation that there will be no mandatory transfers from Scottish Adult DLA to Adult Disability Payment (ADP), which previous indicative forecasts for Scottish Adult DLA had assumed.

As a result of this, the publication assumes an increase in spending in Scottish Adult DLA and a decrease in spending in ADP, with the net effect on overall social security spending being an average decrease of £1 million a year from 2024-25. The publication forecasts Scottish Adult DLA expenditure in 2025-26 of £394 million, reducing to £281 million in 2029-30. This includes spending on Disability Living Allowance for adults until all existing clients in Scotland are receiving Scottish Adult DLA.

Scottish Government
Social Security Directorate
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